

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 36075/36076

STATE OF IDAHO,)	2009 Unpublished Opinion No. 635
)	
Plaintiff-Respondent,)	Filed: October 13, 2009
)	
v.)	Stephen W. Kenyon, Clerk
)	
JAMES ALLEN OWINGS,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Fifth Judicial District, State of Idaho, Gooding County. Hon. R. Barry Wood, District Judge.

Orders revoking probation and requiring execution of unified five-year sentence with one-year determinate term for felony injury to a child, and unified thirty-year sentence with fifteen-year determinate term for rape, affirmed. Order denying Idaho Criminal Rule 35 motion for reduction of sentence, affirmed.

Molly J. Huskey, State Appellate Public Defender; Elizabeth A. Allred, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

Before LANSING, Chief Judge, GUTIERREZ, Judge
and GRATTON, Judge

PER CURIAM

These cases are consolidated. James Allen Owings was charged in Docket No. 36075 with rape, I.C. § 18-6101(1), but, pursuant to a plea agreement, pleaded guilty to an amended charge of felony injury to a child, Idaho Code § 18-1501(1). The district court imposed a unified five-year sentence with a one-year determinate term, suspended the sentence and placed Owings on probation. A report of probation violation was filed. Several months later, in Docket No. 36076, Owings was charged with and pleaded guilty to rape, and also admitted violating probation in Docket No. 36075. The district court imposed a unified thirty-year sentence with fifteen years determinate in the rape case, revoked probation in the injury to child case, and

retained jurisdiction in both cases. Following the period of retained jurisdiction, the district court suspended both sentences and placed Owings on probation. Subsequently, Owings admitted to violating several terms of the probation. The district court delayed disposition for six months and reinstated Owings' probation. Owings again violated probation, and the district court consequently revoked probation and ordered execution of the original sentences in both cases. Owings made an oral Idaho Criminal Rule 35 motion for reduction of his sentence in Docket No. 36076 which the district court denied. Owings appeals, contending that the district court abused its discretion in revoking probation in both cases, and in denying his motion for reduction of sentence in Docket No. 36076.

It is within the trial court's discretion to revoke probation if any of the terms and conditions of the probation have been violated. I.C. §§ 19-2603, 20-222; *State v. Beckett*, 122 Idaho 324, 325, 834 P.2d 326, 327 (Ct. App. 1992); *State v. Adams*, 115 Idaho 1053, 1054, 772 P.2d 260, 261 (Ct. App. 1989); *State v. Hass*, 114 Idaho 554, 558, 758 P.2d 713, 717 (Ct. App. 1988). In determining whether to revoke probation a court must examine whether the probation is (1) achieving the goal of rehabilitation and (2) consistent with the protection of society. *State v. Upton*, 127 Idaho 274, 275, 899 P.2d 984, 985 (Ct. App. 1995); *Beckett*, 122 Idaho at 325, 834 P.2d at 327; *Hass*, 114 Idaho at 558, 758 P.2d at 717. The court may, after a probation violation has been established, order that the suspended sentence be executed or, in the alternative, the court is authorized under Idaho Criminal Rule 35 to reduce the sentence. *Beckett*, 122 Idaho at 325, 834 P.2d at 327; *State v. Marks*, 116 Idaho 976, 977, 783 P.2d 315, 316 (Ct. App. 1989). A decision to revoke probation will be disturbed on appeal only upon a showing that the trial court abused its discretion. *Beckett*, 122 Idaho at 325, 834 P.2d at 327.

Sentencing is also a matter for the trial court's discretion. Both our standard of review and the factors to be considered in evaluating the reasonableness of a sentence are well established and need not be repeated here. See *State v. Hernandez*, 121 Idaho 114, 117-18, 822 P.2d 1011, 1014-15 (Ct. App. 1991); *State v. Lopez*, 106 Idaho 447, 449-51, 680 P.2d 869, 871-73 (Ct. App. 1984); *State v. Toohill*, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982). When reviewing the length of a sentence, we consider the defendant's entire sentence. *State v. Oliver*, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007).

When we review a sentence that is ordered into execution following a period of probation, we do not base our review solely upon the facts existing when the sentence was

imposed. *State v. Whittle*, 145 Idaho 49, 52, 175 P.3d 211, 214 (Ct. App. 2007). Rather we also examine all the circumstances bearing upon the decision to revoke probation and require execution of the sentence, including events that occurred between the original pronouncement of the sentence and the revocation of probation. *Id.*

A motion for reduction of a sentence under I.C.R. 35 is essentially a plea for leniency, addressed to the sound discretion of the court. *State v. Knighton*, 143 Idaho 318, 319, 144 P.3d 23, 24 (2006); *State v. Allbee*, 115 Idaho 845, 846, 771 P.2d 66, 67 (Ct. App. 1989). In presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the motion. *State v. Huffman*, 144 Idaho 201, 159 P.3d 838 (2007). In conducting our review of the grant or denial of a Rule 35 motion, we consider the entire record and apply the same criteria used for determining the reasonableness of the original sentence. *State v. Forde*, 113 Idaho 21, 22, 740 P.2d 63, 64 (Ct. App. 1987); *Lopez*, 106 Idaho 447, 680 P.2d 869.

Applying the foregoing standards, and having reviewed the record in this case, we cannot say that the district court abused its discretion. Therefore, the orders revoking probation and directing execution of Owings' previously suspended sentences and the order denying Owings' Rule 35 motion for reduction of sentence are affirmed.